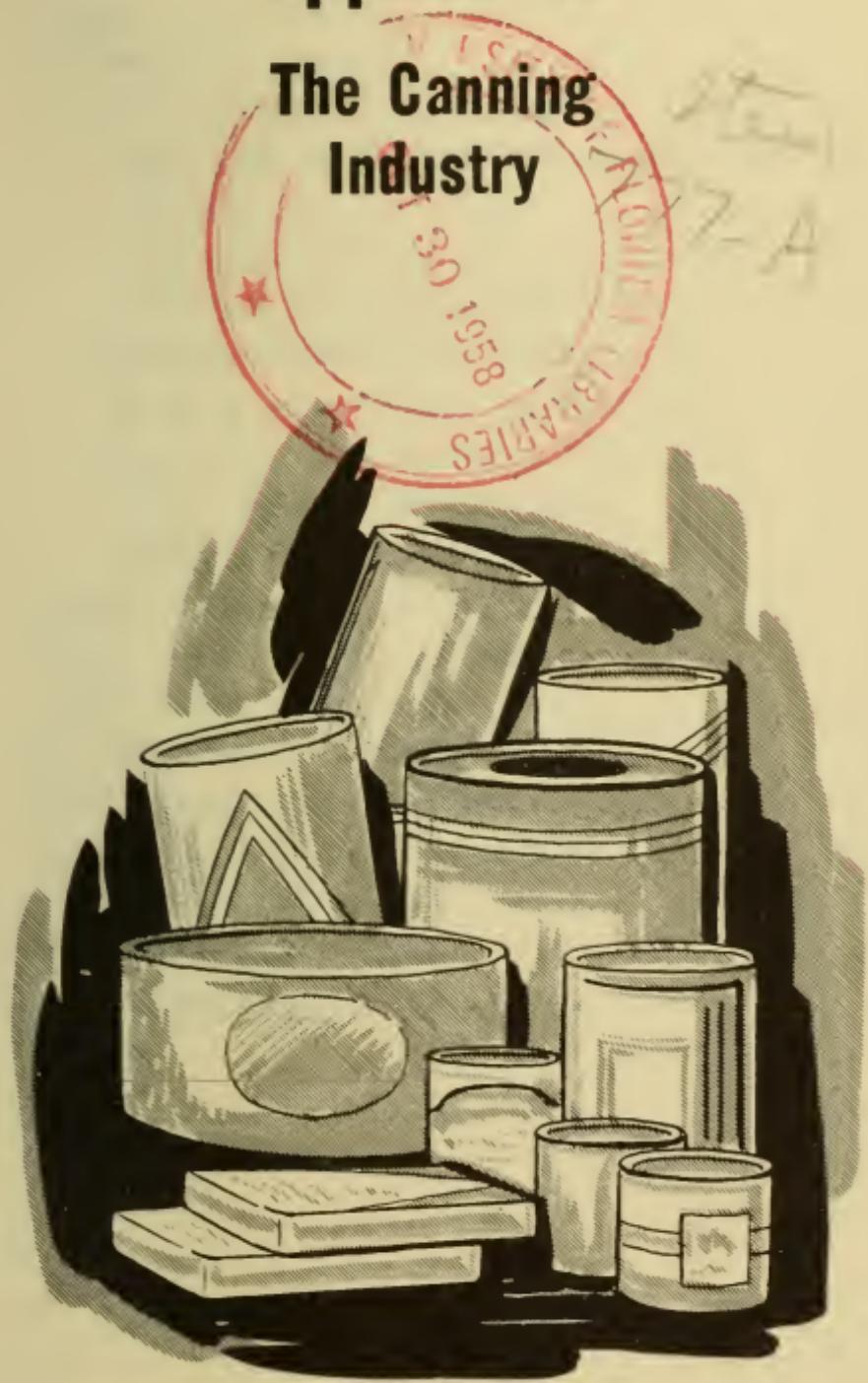


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# HOW THE FEDERAL WAGE-HOUR LAW applies to

The Canning  
Industry



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U.S. DEPARTMENT OF LABOR

UNITED STATES DEPARTMENT OF LABOR

James P. Mitchell, *Secretary*

WAGE AND HOUR AND PUBLIC CONTRACTS  
DIVISIONS

Clarence T. Lundquist, *Acting Administrator*



# FRESH FRUIT AND VEGETABLE CANNING AND PROCESSING UNDER THE FEDERAL WAGE-HOUR LAW

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April 1958



# **FRESH FRUIT AND VEGETABLE CANNING AND PROCESSING UNDER THE FEDERAL WAGE-HOUR LAW**

The Fair Labor Standards Act—popularly known as the Federal Wage-Hour Law—has minimum wage and overtime pay provisions and restricts child labor. These basic requirements apply to employees engaged in, or producing goods for, interstate or foreign commerce. The Act is administered by the U. S. Department of Labor's Wage and Hour and Public Contracts Divisions.

Work done by an employee in any industry must be viewed in the light of the basic statutory requirements, which do not vary. However, the law provides exemptions from these requirements for employees in certain industries and occupations.

This pamphlet gives some general information about the application of the Federal Wage-Hour Law to employees who can or "first process" perishable or seasonal fresh fruits or vegetables. It is not to be considered in the same light as official statements of position contained in interpretative bulletins and other such releases formally adopted by the Divisions and published in the Federal Register. Copies of such publications may be obtained free from the Divisions' nearest regional office.

For answers to your specific questions about the statutory requirements, contact the Divisions' nearest regional office. Give detailed information bearing on your problem, since the coverage or exemption of any employee depends on the facts in each case. See page 18 for the location of the regional office which serves your State.

## **BASIC REQUIREMENTS**

The basic provisions of the Fair Labor Standards Act require:

A MINIMUM WAGE of \$1 an hour; OVERTIME PAY of at least time and one-half the employee's regular rate for all hours worked over 40 in a work-week;

A MINIMUM AGE of 16 years for most jobs, and 14 for a few jobs. In addition, there is an 18-year age minimum for work in occupations designated hazardous by the Secretary of Labor.

## **COVERAGE DISCUSSED**

These requirements apply to employees who are engaged in interstate or foreign commerce or in the production of goods for this commerce, including any closely related process or occupation directly essential to such production. The products of most establishments that can or "first process" perishable or seasonal fresh fruits or vegetables move, in whole or in part, directly or indirectly, in commerce out of the State in which the plant is located. Most establishments in the industry also receive some of their materials or supplies from out-of-State sources. Thus, the interstate activities of most canneries or "first processing" plants bring their employees within the scope of the law. Coverage applies not only to workers who are engaged in the actual canning or processing jobs, but to clerical, maintenance, shipping, transportation and sales employees, among others.

When an employee engages in both covered and noncovered activities in any workweek, he is covered for that entire week. All covered employees are entitled to the statutory benefits, unless a specific exemption applies.

## **VARIOUS EXEMPTIONS AVAILABLE**

Employers who can, freeze or perform other first processing operations on fresh fruits or vegetables may be able to operate up to 28 weeks a year with reduced or no overtime pay obligations. But if a canner's em-

ployees are canning them for market within the "area of production" as defined by the Divisions' Administrator, a complete year-round exemption from both the minimum wage and overtime pay provisions is available with regard to employees doing the actual canning work. The area of production exemption, however, does not apply to freezing and other first processing operations.

There is also a minimum wage and overtime pay exemption for certain "white-collar" employees, and an exemption from the overtime pay provisions for certain motor-carrier workers.

## **"CANNING" AND "FIRST PROCESSING" DEFINED**

Since the distinction between "canning" and "first processing" is fundamental to a determination of which, if any, of the agricultural processing exemptions apply, it is necessary to define these terms.

The term "canning," as used in the law, means hermetically sealing and sterilizing or pasteurizing and refers to a process involving the performance of such operations. Cleaning, peeling, cooking and other necessary preparatory operations on the fresh fruits or vegetables, as well as placing them in cans or other containers for hermetically sealing, are included, if performed as part of a single uninterrupted canning process. Subsequent operations such as labeling the cans or containers and placing them in boxes are part of canning, too, whether they are performed as part of a uninterrupted or an interrupted process.

"First processing" means the first change in the form of the fresh fruits or vegetables and thus includes such operations as freezing, drying, and pickling.

## **"14-WEEK OVERTIME PAY" EXEMPTION**

Under one exemption, employees working in "any place of employment" where their employer is engaged in the canning or first proc-

essing of fresh fruits and vegetables, may be exempt from the overtime pay provisions of the Act during a period or periods not exceeding a total of 14 workweeks in the calendar year. This exemption applies only during the active season and only in establishments where the specified operations are actually carried on. Two groups of employees may be exempt: (1) Those actually engaged in the canning or first processing of fresh fruits or vegetables, and (2) those whose work is a necessary incident to these operations, and who work solely in the portions of the premises devoted by their employer to such operations. Among exempt employees would be those office employees, watchmen, maintenance workers and warehousemen whose work relates exclusively to the canning or first processing of the fresh fruits or vegetables.

During the workweeks (up to 14 in the calendar year) a plant is *exclusively* engaged in the canning or first processing of fresh fruits or vegetables, all employees working in the plant are exempt.

## **Byproduct Operations**

Byproduct operations on fresh fruits or vegetables may also be included within this exemption. The exemption is illustrated by the case of an employer who commences processing operations on fresh fruits or vegetables on a processing line which divides after a certain stage in the operations to permit the processing of different portions of the commodity into different products or byproducts. So long as all these operations take place in the same place of employment and are part of a continuous series throughout which the commodities remain perishable, the employees continuing the processing of the different portions into products or byproducts are considered engaged in first processing.

A specific example is the citrus fruit canner or processor who makes cattle feed and molasses from citrus waste. Starting with the whole orange, processing is continued on

two production lines—one for the edible portions and the other for the waste to produce cattle feed and molasses. Both the primary operations on the edible fruit, and the cattle feed and molasses operations on the waste are exempt as first processing, when taking place in the same place of employment as a part of a continuous series of operations beginning with the fresh orange.

## **"SEASONAL INDUSTRIES" EXEMPTION**

A limited exemption from the overtime pay provisions is provided for industries which the Divisions' Administrator specifically finds to be of a seasonal nature. The canning and first processing of fresh fruits or vegetables have been found to be seasonal in nature. Like the exemption first discussed, this "seasonal" exemption is available for as many as 14 workweeks in the calendar year and it is an exemption from the overtime pay provisions only. Here, however, the similarity ends, for the seasonal exemption places a restriction on the number of hours that may be worked without payment of overtime. During the 14 workweeks in which the exemption is claimed, an employee is exempt only if he is paid time and one-half his regular rate of pay for all hours worked over 12 in a day or 56 in a workweek.

Unlike the "14-week overtime pay" exemption, this exemption is not limited to employees who work in a particular "place of employment." Once the determination has been made that an industry is seasonal, the exemption gained is an *industry* exemption. In other words, the exemption applies to all employees in the industry, whether plant workers, office employees, maintenance men or repairmen, and even though they may work at other locations than the plant premises itself.

This exemption may also be taken during the dead season for repair and maintenance employees, as well as for workers engaged in labeling, handling, boxing or shipping carry-

over stock, if the establishment has not previously used up its 14 exempt workweeks.

## **SELECTION OF WEEKS FOR EXEMPTION**

The employer is free to decide in which workweeks to take the "14-week overtime pay" exemption so long as the specified operations are being carried on at the time selected. He is free to select any 14 workweeks for the "seasonal industries" exemption. The two exemptions may be taken consecutively if the employer chooses, although the weeks during which exemption is claimed need not be consecutive. Of course, the minimum wage requirement of \$1 an hour must be observed at all times.

The decision to take exemption may be made by the employer at the end of the workweek, and at that time the type of exemption must be entered on the payroll. The records must also show each workweek during which the plant is operating under either 14-workweek exemption, and a notice of the exemption must be posted. These and all other record-keeping requirements are listed in the Divisions' regulations, Part 516.

## **"AREA OF PRODUCTION" EXEMPTION**

The "area of production" exemption provides that employees employed within the area of production in "canning" agricultural or horticultural commodities *for market* are exempt from both the minimum wage and the overtime pay provisions during the entire year. The Divisions' regulations, Part 536, contain the definition of the "area of production."

As mentioned before, this exemption does not apply to freezing and other first processing operations on fresh fruits or vegetables.

Mere employment within the "area of production" is not enough to bring an employee within this exemption. He must actually be engaged in "canning," as defined on page 3. The canner's office help, watchmen and other custodial and maintenance employees who do

not actually engage in canning, are not within the area of production exemption. Such employees, however, may be exempt from the overtime pay provisions, for a limited period, under the exemptions previously discussed.

In addition, the employer must can his products *for market* for the exemption to apply. The canning of fresh fruits or vegetables for further processing, such as recanning, by the same employer is not "for market" and therefore is not exempt.

## **"Area of Production" Defined**

Employees of a fresh fruit and vegetable cannery are considered employed in the area of production if: (1) The cannery is located in the open country or in a rural community; and (2) at least 95 percent of the fruit and vegetables canned come from "normal rural sources of supply" located not more than 15 airline miles from the plant.

"Open country or rural community" does not include cities, towns or urban places having a population of 2,500 or more, or any places within specified airline distances from cities, towns and urban places as follows:

Within 1 mile of any community with a population of 2,500 or over, or

Within 3 miles of any community with a population of 50,000 or over, or

Within 5 miles of any city with a population of 500,000 or over.

Population is determined by the latest United States Census.

Fresh fruits and vegetables are considered to come from "normal rural sources of supply" if it can be shown that the commodities were received from any of the following sources:

(1) Farms within 15 miles, or

(2) Farm assemblers or other establishments through which these commodities customarily move, which are within 15 miles and are located in the open country or in a rural community, or

(3) Farm assemblers or other establishments through which these commod-

ties customarily move that are within 15 miles, even though they are not in the open country or in a rural community, provided it can be shown that the fresh fruits and vegetables came from farms within 15 miles from the plant.

The period for determining whether 95 percent of the fresh fruits and vegetables come from normal rural sources of supply within 15 airline miles is the last preceding calendar month in which the plant operated for at least two workweeks. Thus a plant may be able to take this exemption in some months but not in others, depending upon the source of the fresh fruits or vegetables. For a new plant not in operation for a month, the percentage is figured on the basis of receipts during its time in operation. The 5-percent tolerance allowed by the regulations may be useful to the plant operator who receives occasional shipments from farmers or suppliers not within the qualifying area.

## **COMBINATION OF EXEMPTIONS**

All the exemptions applying specifically to the industry as such have now been analyzed. However, a word of caution about the exemptions already discussed—an employee who engages in both exempt and nonexempt work during a workweek is not exempt during that week. But where an employee does different kinds of work which come within different statutory exemptions, there may be a combination of exemptions under certain conditions. Questions about such combinations should be addressed to the Divisions' nearest regional office.

## **"WHITE-COLLAR" EXEMPTION**

Many firms that can or first process fresh fruits or vegetables are able to take a minimum wage and overtime pay exemption the law provides for any employee engaged in a bona fide executive, administrative, or professional capacity, or as an outside salesman, as defined in regulations, Part 541, issued by the Divisions' Administrator.

The fact that an employee may have an impressive job title or may be paid a good salary does not suffice to make him exempt. For exemption to apply, the individual's duties must meet a series of tests listed in the regulations.

Among the basic requirements for exemption are the following: (1) An EXECUTIVE employee's *primary* duty must be the management of the enterprise, or of a recognized department or subdivision; (2) an ADMINISTRATIVE employee must *primarily* perform office or nonmanual field work of substantial importance to the management or operation of the business; (3) a PROFESSIONAL employee must *primarily* perform work requiring advanced knowledge in a field of science or learning, or perform creative work in an artistic field; (4) an OUTSIDE SALESMAN must be engaged to sell, away from his employer's place of business.

It is not necessary, however, that an employee spend every hour of his workweek in exempt duties. A 20-percent tolerance is allowed for nonexempt activities. The tolerance for executive, administrative and professional employees is measured by the hours which the employee himself works in the workweek. The time devoted to nonexempt work by outside salesmen may not exceed 20 percent of the hours worked in the workweek by the employer's nonexempt employees.

There are also salary tests for exemption of executive, administrative and professional employees, but not for outside salesmen.

The exemption is explained in the Administrator's Explanatory Bulletin on regulations, Part 541, which is available on request to the Divisions.

## "MOTOR-CARRIER" EXEMPTION

The law provides an overtime pay exemption for drivers, drivers' helpers, loaders and mechanics, where they are engaged in activities of a character directly affecting the safety of operation of their employer's motor vehicles transporting goods in interstate or

foreign commerce on the public highways. Where actual transportation in interstate commerce has not yet begun, as, for example, transportation within the State of fruit from the field to the cannery, the exemption is inapplicable.

For guidance on what kinds of activities are considered to be safety affecting and other details on the exemption, see the Divisions' interpretative bulletin, Part 782, on Motor Carriers.

## **HOURS WORKED**

The law requires that covered employees (unless specifically exempt) be paid for all hours worked. "Hours worked" include all time the employee is working on his job and all time he is required to be at his place of work or on duty. Thus, when workers are required to stand by to resume their duties until supplies of produce arrive, their waiting time counts as hours worked.

Sometimes, too, employees may fire the boilers or get machines in order before processing activities begin. Time spent on the job by employees who come in early, or stay late, should be counted as hours worked. All hours worked should be recorded in accordance with the Division's regulations, Part 516, on Records.

## **SOME OVERTIME PAY PROBLEMS**

The Federal Wage-Hour Law does not require that an employee be paid each week. The employer may make his wage and salary payments at other regular intervals, such as every two weeks, every half-month, or once a month. What the Act does require is that both minimum wage and overtime pay must be computed on the basis of hours worked *each* workweek, standing alone. Thus the employer cannot eliminate the obligation to pay overtime by averaging the hours of work over two or more workweeks.

A workweek is a regularly recurring period of 168 hours in the form of seven consecutive

24-hour periods. The workweek need not be the same as the calendar week—it may begin any day of the week and any hour of the day. Once established, an employee's workweek may not be changed unless the change is intended to be permanent.

Before overtime pay can be computed it is necessary to determine the employee's regular rate, since the Act requires payment for overtime hours at not less than one and one-half times the regular rate of pay. The "regular rate" is defined in the Act to include all remuneration for employment, except certain payments excluded by the law itself. The latter include premium payments for overtime work; time and one-half paid for work on Saturdays, Sundays and holidays; discretionary bonuses, gifts and payments in the nature of gifts on special occasions; and payments made pursuant to certain profit-sharing, welfare or thrift and savings plans.

Also excluded from the regular rate are payments made for occasional periods when no work is performed due to vacation, holiday and illness, and similar payments, in amounts approximately equivalent to the employee's normal earnings for a similar period of time.

Of course, the regular rate may be more than the statutory minimum but it cannot be less. Should the calculation of an employee's regular rate fall below the statutory minimum, the employer must make up the difference and compute overtime on the basis of at least \$1 an hour.

Assuming an employee receives no other compensation than that stated, here is how to figure the regular rate and overtime compensation in some typical situations:

**Employees Paid an Hourly Rate.**—The regular rate of pay is the hourly rate. When the employee works more than 40 hours in a workweek, he is due one and one-half times his regular rate for each hour over 40.

Example: Bill is paid a single hourly rate of \$2, so \$2 is his regular rate. For

each overtime hour, he should be paid \$3 (\$2 times one and one-half equals \$3).

**Piece-Rate Workers.**—The regular rate is obtained by dividing the total weekly earnings by the total number of hours worked in the workweek. The employee is entitled to payment of one-half this regular rate for each hour over 40, in addition to the full piece-work earnings.

Example: Jim is paid at piece rates. In one week, he works 44 hours and his earnings come to \$66. His regular rate for that week is \$1.50 (\$66 divided by 44 hours). In addition to his regular rate, he is due 75 cents (one-half of \$1.50) for each hour over 40, or four times 75 cents for his overtime hours. This \$3 overtime premium would bring his total earnings for the week to \$69.

Another way to compensate piece workers for overtime is to pay one and one-half times the piece rate for each piece produced during overtime hours. The piece rate must be the one actually paid during nonovertime hours and it must be enough to yield the minimum wage per hour. However, this method of payment may be used only if the employer and employee agree to it in advance.

Example: Ellen is paid 10 cents for each piece. In a week during which she works 46 hours, she earns \$50 for the first 40 hours at this rate. For her overtime hours, she is due piece and one-half, or 15 cents, for each piece produced. As she produced 75 pieces during the overtime, she should be paid \$11.25 (75 times 15 cents) as overtime pay. Thus, she will earn a total of \$61.25 for the week.

**Salaried Employees.**—The regular rate for an employee who is paid a salary for a specified number of hours a week is obtained by dividing the weekly salary by the specified hours.

Example: George is paid a salary of \$60 for a 40-hour workweek. His regular rate of pay is \$1.50 (60 divided by

40 hours). In weeks he works overtime, he is owed \$2.25 (\$1.50 times one and one-half) for each hour over 40, in addition to his salary.

If a salary is paid as straight-time pay for whatever number of hours is worked in a workweek, the regular rate is obtained by dividing the salary by the hours worked each week.

Example: Joe, whose hours vary from week to week, has an understanding with his employer that he will be paid \$60 a week. Therefore his regular rate will vary when he works overtime. If he works 50 hours one week, his regular rate is \$1.20 an hour (\$60 divided by 50 hours). He is due one-half the regular rate, or 60 cents, for each of the 10 overtime hours, plus his salary, or \$66 for the week. If he works 60 hours the next week, his regular rate would be \$1 an hour and he is due one-half that, or 50 cents, times the 20 overtime hours, plus his salary, or \$70 for the week.

If a salary is paid on other than a weekly basis, the weekly pay must ordinarily be determined in order to compute the regular rate and overtime pay. For instance, if the salary is paid for a half-month, multiply it by 24 and divide the product by 52 to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

## CHILD LABOR RESTRICTED

The law sets a minimum age of 16 for general employment and 18 for work in jobs declared hazardous by the Secretary of Labor. Children of 14 and 15 years of age may be employed in a limited number of jobs, such as office and sales work, outside of school hours and under the following limitations on hours of work: (1) The child must work no more than three hours on a school day and no more than eight hours on a non-school day; (2) he must work no more than 18 hours in

a week during any part of which school is in session, and no more than 40 hours during a week when there is no school; (3) all his work must be performed between 7 a. m. and 7 p. m.

Among jobs which have been declared hazardous are the occupations of motor-vehicle driver or driver's helper (order No. 2); elevator operator, and jobs involving riding on freight elevators, unless the elevator is operated by an assigned operator, and the operation of other power-driven hoisting apparatus, such as high-lift trucks (order No. 7); and the operation of power-driven wood-working machines (order No. 5). The texts of these orders and other information about the child-labor provisions are contained in the Divisions' interpretative bulletin, Part 4, Subpart G, on Child Labor.

The law directly prohibits the employment of boys and girls below the minimum ages in interstate or foreign commerce, or in the production of goods for this commerce, including any closely related process or occupation directly essential to such production. It also prohibits the shipment or delivery for shipment in interstate or foreign commerce by any producer, manufacturer, or dealer of any goods produced in establishments in or about which minors have been illegally employed within 30 days prior to removal of the goods.

For assurance that his job is suitable for his age, every young worker should have an age or employment certificate which shows he is at least the lawful age for his job. The employer who requires and keeps on file such a certificate for every young person hired protects himself from unintentional violation of the child-labor requirements. Age or employment certificates issued under State child-labor laws are accepted as proof of age, for purposes of the Act, in all States (including the District of Columbia, Hawaii, and Puerto Rico) except Idaho, Mississippi, South Carolina, and Texas. In these four States, Federal certificates are issued.

## **RECORDS MUST BE KEPT**

Under the Federal Wage-Hour Law, employers are required to keep records which contain the name and address of each employee, his birth date if under 19, the hours he works and his earnings, including his regular rate for any week when overtime pay is required, and certain other specified items that most employers keep for their own information. No special form or order for the records is necessary.

The records to be maintained for exempt employees differ from those required for non-exempt employees.

Payroll records and certain other data must be kept for at least THREE YEARS from date of entry. Supplementary records, such as time sheets and time cards, need be kept only TWO YEARS. Employers may keep microfilm copies of their records, provided facilities are made available to inspect the film and the employer is prepared to make any transcription of the information contained on the film, if requested by the Divisions.

Complete information on what data should be recorded is available in the Divisions' regulations, Part 516, on Records.

## **POSTER MUST BE DISPLAYED**

Firms that have covered employees are required to display a poster where employees can readily see it. This poster, which briefly outlines the law's provisions, may be obtained free from the Divisions' nearest office.

## **DIVISIONS' ASSISTANCE AVAILABLE**

Anyone—whether an employer, a worker, or other person—may ask for the assistance of the Divisions' nearest regional office if he thinks a firm is violating the Federal Wage-Hour Law. His name will be held in confidence.

If necessary, the Divisions will make an investigation and the complainant will be noti-

fied about the results. Information obtained from records, workers or other sources during an investigation is treated confidentially.

It is a violation of the law to discharge or otherwise discriminate against an employee for filing a complaint or participating in a proceeding under the Act.

## RECOVERY OF BACK PAY

There are three methods for recovering back pay due under the Federal Wage-Hour Law. (1) The Divisions' Administrator may supervise the payment of back wages found due employees, after an investigation. (2) On the written request of employees, the Secretary of Labor may bring suit in certain cases against employers to recover back wages. (3) Employees may bring suit to recover back pay and liquidated damages equal in amount to the wages withheld, plus attorney's fees and court costs. The employee may not bring suit or recover liquidated damages if he has been paid back wages under the Administrator's supervision, or if the Secretary sued for him.

Suits for back pay must be begun within two years after the wages became due and the employer failed to pay them.

## **SOME FREE PUBLICATIONS**

These are some of the Divisions' official publications which may be obtained free from the nearest regional office:

**Wage-Hour Coverage—Part 776.**

**Overtime Compensation—Part 778.**

**Authorization of Established Basic Rates for Computing Overtime Pay—Part 548 (and Explanatory Bulletin).**

**Hours Worked—Part 785.**

**Area of Production—Part 536.**

**Executive, Administrative, Professional, Local Retailing Employees, and Outside Salesmen—Part 541 (and Explanatory Bulletin).**

**Motor Carriers—Part 782.**

**Child Labor—Part 4, Subpart G.**

**Records—Part 516:**

**Subpart A, General Requirements.**

**Subpart B, Miscellaneous Exemptions and Other.**

**The Fair Labor Standards Act, as amended.**

**The Fair Labor Standards Act Poster.**

## LIST OF REGIONAL OFFICES

**Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)**

Regional Office: Boston, Mass.

**Region II (New Jersey, New York)**

Regional Office: New York, N. Y.

**Region III (Delaware, Maryland, Pennsylvania)**

Regional Office: Chambersburg, Pa.

**Region IV (Alabama, Florida, Georgia, Mississippi, South Carolina)**

Regional Office: Birmingham, Ala.

**Region V (Michigan, Ohio)**

Regional Office: Cleveland, Ohio

**Region VI (Illinois, Indiana, Minnesota, Wisconsin)**

Regional Office: Chicago, Ill.

**Region VII (Colorado, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming)**

Regional Office: Kansas City, Mo.

**Region VIII (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)**

Regional Office: Dallas, Tex.

**Region IX (Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington)**

Regional Office: San Francisco, Calif.

**Region X (Kentucky, Tennessee, Virginia, West Virginia)**

Regional Office: Nashville, Tenn.

**Cooperating State Agency (North Carolina)**

North Carolina Department of Labor:  
Raleigh, N. C.

**Alaska: Anchorage, Juneau**

**Puerto Rico: San Juan**

**Hawaii: Honolulu**

The Divisions also have at least one field office in almost every State.



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Industry Pamphlet No. 1



U.S. DEPARTMENT OF LABOR